IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/08/2003

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

H.C.P.No.2442 of 2002

Pandi .. Petitioner

-VS-

1. The State rep. by the
Secretary to Government
Prohibition & Excise Department
Fort St. George,
Chennai-9.

2. The District Magistrate and
District Collector
Dindigul District
Dindigul. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus for the relief as stated therein.

For Petitioner : Mr.D.Veerasekaran

For Respondents : Mr.A.Navaneethakrishnan
Addl. Public Prosecutor

:ORDER

(The order of this Court was made by V.S.SIRPURKAR,J.)

The petitioner in this case is one Pandi, who is the uncle of one Vellayan @ Muthu. The said Vellayan @ Muthu (referred to as "the detenu" hereafter) was ordered to be detained by the District Magistrate, Dindigul branding him as a Goonda under Section 3 of the Tami Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982).

2. It is seen from the background that on 14.8.2002, the detenu committed an offence under Section 302 IPC and probably absconded thereafter. The

reference is to be found in paragraph 1 (iii). It is also a clear cut reference that the detenu surrendered before the Judicial Magistrate No.III, Tanjore on 21.8.2002. In paragraph 3, however, there is a specific reference to the incident on 15.8.2002, wherein the said detenu along with one Murugan snatched Rs.50/- from the auto rickshaw driver and also broke the front side glass of the auto and thereafter created rages, because of which the entire area came to a standstill. The detenu was proceeded against for the offences under Sections 341, 427, 392 and 506(II) IPC on account of this incident dated 15.8.2002. These crimes were registered as Crime No.414 of 2002. This incident is used as a ground case for the detention.

3. The learned counsel for the petitioner points out that in this case there was a complete non application of mind on the part of the detaining authority as the detaining authority has not even taken into consideration the major offence under Section 302 IPC while considering the possibility of the detenu coming out on bail. It is pointed out by the learned counsel that, in paragraph 5, only the prosecution of the detenu for the offences under Sections 341, 427, 392 and 506(II) IPC is considered and the detaining authority goes on to hold that in such type of cases there is every likelihood of the detenu going out on bail. However, there is not even a slight mention to the earlier case registered vide P.S.Crime No.411 of 2002 for the offences under Sections 147, 148, 341, 302 IPC. The learned counsel says that if this had been considered by the detaining authority, he might not have ordered the detention as it is difficult to come out on bail in such serious offences.

4. As against this, the learned Additional Public Prosecutor supported the order by suggesting that it was not necessary for the detaining authority to have considered the incident on 14.8.2002.

5. It is obvious that the detaining authority has actually not considered the incident dated 14.8.2002 for which the detenu was being proceeded against under the major crime like murder. What was considered by him was only the possibility of bail in respect of the minor offences under Sections 341, 427, 392, 506(II) IPC, which was the result of the incident dated 15.8.2002.

6. We have, therefore, no doubt that the detaining authority has failed to apply its mind. It may be that if the detaining authority had considered the fact that the detenu was being proceeded for an offence under Section 302 IPC also, he might not have passed the order of detention. Thus, the detaining authority failed to consider the very substantial fact. In that view, we are of the opinion that the order of detention suffers from non application of mind. On this count alone, the petition must succeed. We, therefore, quash the detention order dated 22.10.2002 and order that the detenu be released forthwith, unless his detention is required in any other matter. Rule is made absolute.

Index : Yes
Internet : Yes

To:

1. The state rep. By the
Secretary to Government
Prohibition & Excise Department
Fort St. George,
Chennai-9.

2. The District Magistrate and
District Collector
Dindigul District
Dindigul.

3. The Public Prosecutor
High Court, Madras.

Sasi